Public Prosecutor v Lim Chang Ming

HIGH COURT (KUALA LUMPUR) — FEDERAL TERRITORY CRIMINAL CASE NO 49/85
SHANKAR J
8 MARCH 1989

Criminal Law — Dangerous drugs — Trafficking in — Presumption of trafficking — Knowledge that thing carried is a dangerous drug — Dangerous Drugs Act 1952, ss 37 & 39

The accused was apprehended by the police after a chase and was discovered to be in possession of a package containing 83.62g of heroin. He was then charged with trafficking under s 39B of the Dangerous Drugs Act 1952. When giving evidence, the accused admitted that he was an addict and claimed that he was carrying the package for a friend named Tan who normally supplied him with drugs. He claimed to have had no knowledge of the contents of the package. However, in his cautioned statement, the accused claimed that he received the package from three Malay persons who paid him $100 to carry it.

Held, convicting the accused:

(1) Section 37(g) of the Dangerous Drugs Act 1952 ('the Act') does not create any presumption of knowledge of the nature or quantity of the drug in question. It only creates a presumption of knowledge of the act of concealment. Knowledge of concealment by itself is not equivalent to possession. Custody or control of a dangerous drug has to be shown to bring s 37(d) into operation. It is then presumed that the accused was not only in possession but also deemed to have known the nature of the drug.

(2) The requirement of knowledge as to the fact of possession of the drug and the nature of the drug is a question of law. There is no rule of law that to sustain a charge of trafficking it is incumbent upon the prosecution to prove that the accused knew the precise weight or amount of drug found in his possession. The whole purpose of the presumption is to relieve the prosecution of this burden by shifting the onus of proof, once the fact of possession has been established.

(3) Section 39B of the Act does not create an absolute offence. The prosecution must show that the accused had the dangerous drug in his care or custody. Once that is done, mens rea in the sense of being in possession of the drug with knowledge of its nature will be presumed.

(4) The issue as to whether a person knew or did not know something will depend upon credibility. The accused contradicted himself on who gave him the package and on how much he was paid. These were serious discrepancies. The fact that the accused knew that Tan was a supplier of drugs and the fact that the accused concealed the package in his trousers suggested that he knew its contents.

[*Editorial Note*: The accused appealed to the Supreme Court vide Criminal Appeal No 05-18 of 1989. The appeal was dismissed by the Supreme Court comprising Lee Hun Hoe CJ (Borneo), Mohamed Azmi and Ajaib Singh SCJJ on 11 September 1989.]

Cases referred to

1 *Warner* v *Metropolitan Police Commissioner* [1968] 2 All ER 356 (folld)
2 *PP* v *Abdul Hamid bin Basir* (Johore Bahru Criminal Trial No 5 of 1984) (unreported) (refd)
3 *PP* v *Ahmad bin Puteh & Ors* [1987] 1 CLJ 488 (folld)
4 *PP* v *Badrulsham bin Baharom* [1988] 2 MLJ 585 (folld)

Legislation referred to

Dangerous Drugs Act 1952 ss 37, 39

Foo Lee Mei (Deputy Public Prosecutor) for the Public Prosecutor.
T Marbeck for the accused.

Cur Adv Vult

Shankar J: Lim Chang Ming ('the accused') is charged with the offence of trafficking in 83.62g of heroin contrary to s 39B of the Dangerous Drugs Act 1952 ('the Act'). If found guilty, the death penalty is mandatory.

The unrebutted evidence at the close of the prosecution's case can be adequately summarized thus. On 2 February 1985 at about 9pm, a team of seven policemen left the Dang Wangi Police Station on a routine crime prevention exercise. They were in plain clothes. From Jalan Dang Wangi (Jalan Campbell) they walked in the direction of Jalan Chow Kit.

In the lead were Constable Mohamed Sapri bin Mohamed Yusoff (PW4) and Constable Azahari bin Mohamed Zain (PW5). On arrival at Jalan Sultan Ismail, just to the south of Jalan Tuanku Abdul Rahman, these two policemen crossed the road. Jalan Sultan Ismail is a six-lane highway with a central road divider. On the other side of the road from them, beyond the kerb was a slight rise along which was a row of small trees and shrubs screening off a settlement known as Kampong Limau. There were a number of footpaths from the kerb across the shrubbery into Kampong Limau.

When PW4 and PW5 got to the divider and started to cross over to the other side they noticed a male Chinese there subsequently identified as the accused. On noticing the approach of PW4 and PW5 the accused turned round and fled in the direction of Kampong Limau, up the slope, and through the shrubbery. PW4 and PW5 gave chase. The accused then stumbled and fell. PW4 and PW5 then proceeded to search him. He just sat where he fell with his feet stretched out before him. PW4 and PW5 tried to lift him but he refused to get up. By this time the other members of the team had also arrived.

The accused was then bodily lifted and brought back to a spot which was better lighted from the road lights of Jalan Sultan Ismail and searched. Tucked into the inside of the front of his trousers they found a plastic package wrapped in a Chinese newspaper. PW4 looked inside and found the packet to contain a pink substance he suspected to be 'dadah'. The accused was arrested and brought to Dang Wangi Police Station. Here PW4 Sapri made a police report. The accused and the package were then taken to the Cawangan Anti-Dadah Headquarters and handed over to Insp Khalid (PW3).

As investigating officer in this case, Insp Khalid took possession of the accused's personal effects. In a purse was $100, consisting of four $10 notes and the rest in $1 notes, of which one note was an old issue note. Insp Khalid also weighed the package newspaper and all and found it to weigh 300g. He used an ordinary weighing scale for this. He noted the contents of the plastic package to be partly granular and partly powdery. The exhibits were locked in his safe.

The following day the plastic packet, contents and Chinese newspaper were photographed by the police photographer Ariffin bin Mohamed Zain (PW1). These were tendered as exhs P3A and B.

On 6 February 1985, Insp Khalid had two further photographs taken of the place where the accused was arrested. These photos were taken by Abdullah Wahid bin Tahir (PW2), with Corporal Sapri in attendance.

On 5 February 1985, Insp Khalid took the plastic packet, contents, and newspaper in a sealed envelope to the government chemist, who analysed the contents of the packet. They were returned on 25 April 1985 to Insp Khalid in the same plastic packet and newspaper in an envelope now sealed with the Department of Chemistry seals. The contents of the plastic packet were now totally in a powdered state having been homogenized for analysis.

PW4 Sapri and PW3 Insp Khalid had both put their initials and date of first receipt on the newspaper and plastic packet and the chemist's seals were broken in court when the envelope was produced to be entered as exhibits in this trial.

The chemist's evidence (Woo Kai Hung — PW6) was that the contents of the plastic packet was 235.50g net and upon analysis was found to contain 83.62g of heroin, which is a substance listed in the first Schedule of the Act.

All the ingredients required to sustain the charge were now before the court. A prima facie case had been made out. The statutory presumption as to knowledge arising from the mere fact of concealed possession was operative. If unrebutted the evidence would have warranted the conviction of the accused. So I called on the accused to enter upon his defence.

The accused elected to give evidence on oath. As part of his case, he elected to put in a cautioned statement he had made to Insp Saliman Kasim, the recording officer, at 2340 hours on 2 February 1985 (exh D13). The accused testified that he had been duly cautioned and had made the statement voluntarily.

Part of the defence was either common ground or uncontested by the prosecution. I shall deal with this first. At the time of his arrest, the accused was 23 years old. He was born in Penang. At the age of 15, his parents divorced. He was then in Form 2 in the Confucian Chinese School in Jalan Davidson, Kuala Lumpur. He left school and took to a life of petty crime and extortion. At 17, he was arrested and sent to the Henry Gurney School in Malacca. After his release he got involved in drug addiction. He tried to rehabilitate himself at the Tip-Top Centre in the Kuala Kubu Hospital but was unsuccessful because of a shut down due to a general hunger strike. From the time of his discharge from the centre up to the time of his arrest on 2 February 1985, the accused says he needed to consume two to three tubes of heroin a day, the cost of which was about $30. The remainder of the accused's evidence calls for findings on credibility and inferences from the facts. I shall set this out now.

In his cautioned statement, the accused gave his dialect as Hokkien. The recording officer was therefore assisted by L/Kpl Chong Kok Hai who translated from Hokkien to Bahasa Malaysia. In his defence, the accused elected to speak in Cantonese. In the course of his defence, the accused made some criticisms on the accuracy and veracity of the cautioned statement on the basis that the interpretation was faulty since he was forced to use an interpreter whose dialect he did not quite understand.

In his cautioned statement, the accused is recorded as having said that at about 9.30pm he had gone from Sungei Wang Plaza to Jalan Sultan Ismail by taxi. Here he alighted and crossed the road to Kampong Limau. As he did so he saw three Malays whom he had seen frequently in Kampong Limau. He asked them to sell him half a packet of heroin (Fit). They asked him to wait awhile and then gave him a package wrapped in a Chinese newspaper. The accused specifically says he did not know the contents of this package. He tucked this package into his trousers in front of his stomach. One of the three Malays gave him $100. The accused then entered Kampong Limau. Just before he did so they told him they would wait for him in Kampong Limau. As soon as he entered Kampong Limau he was arrested by the police and brought to the police station.

The rest of the cautioned statement consists of question and answer. The accused admitted he was a drug addict for about a year and required three to four tubes daily. He could identify the three Malays but did not know their names. This was the first time he had carried that large quantity of drugs. To the question why he was willing to carry the drugs into Kampong Limau his answer was that as a drug addict he needed money and so was willing to accept $100 to carry the drugs into Kampong Limau.

But to the question whether he knew what the contents of the package were, his answer was that he did not know. And to a further question he said he only came to

know the package contained drugs after he was arrested and the police showed him what the package contained.

The accused's evidence on oath was as follows. He was unemployed at the time and earned his keep by washing cars and guarding them (ie a 'jaga kereta'). He got his drug supply from one Tan Boon Hock but sometimes from others. By 8.45pm on 2 February 1985, the accused says he had already earned $40 in $1 notes doing 'jaga kereta' work at Sungei Wang Plaza. By then he had already started a craving for heroin, so he went to Kampong Limau, where the drug was readily available. On arrival there by taxi, he met Tan Boon Hock ('Tan') and told him he wanted to buy drugs. But Tan told him he did not have any to supply at that time. Then Tan gave him the package wrapped in a Chinese newspaper and asked him to take it into Kampong Limau and deliver it to one Ah Keong. Tan said that if the accused wanted to get 'it' (meaning drugs) from him he had to deliver the packet to Ah Keong. Tan further told him not to ask any questions as to the contents of the package. Tan gave him $40 in denominations of $10 and an old issue $1 note which was to be used as a 'password' at the time of the hand over. With this $1 note Tan said he could get the drugs from Ah Keong. The accused is emphatic he did not know what the package contained. He tucked it into his trousers and moved towards Kampong Limau but before he had taken a few steps he was arrested by the police. According to the accused's account, it would appear the police ambushed him, by dashing up on him from behind some bushes.

This trial was adjourned on 24 February 1989 after the prosecution had closed its case, so that the accused could make his defence on Monday, 27 February 1989. This he did along the lines aforesaid. But something else happened which complicates matters somewhat.

On 24 February 1989, the accused handed Tan a note written up in Mandarin. This was done in the court lock-up where Tan was waiting, having been summoned by the defence to give evidence in this case. Tan is presently being detained in Kajang Prison, for reasons which are not in evidence in this trial. The note was intercepted by the prison warder who had charge of Tan. It was put to the accused in cross-examination by the DPP. The accused admitted he had written the note. A certified translation of it reads as follows:

> Translation
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> Kai Chai (literally 'chicken'), only you can save me now because you witnessed the happening of my case at the scene. I wish you testify that sometime past 9pm on 2 February 1985 you gave me a package wrapped in newspaper at the road side which was behind where I was arrested. At that time you were with two other persons. You should say that one of them looked like a Siamese man with Malay looks. At that time you wanted to go into 'Wong How' (literally 'Queen' in Cantonese) but saw seven to eight persons approaching from the opposite side of the road, one of them as if holding walkie talkie suspected to be a policeman. I happened to come from the opposite side of the road after alighting a taxi. Therefore you gave it to me and asked me to put it inside my trousers and bring it into 'Wong How' to give it to Ah Keong. At that time I did ask you what it was. You told me not to ask and gave $100 consisting of three or four $10 notes and the rest in $1 notes. You should say that I often went to 'Wong How' to buy stuff from you all and knew each other. After I took the thing and walked into 'Wong How' for a short distance, I was arrested. You all went away after seeing this.
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> Translated by me,
> (Teoh Kian Meng)Jurubahasa Cina,
> Tingkatan Tertinggi,
> Mahkamah Tinggi,
> Kuala Lumpur.
> 25 February 1989

In his cross-examination by the learned DPP, the accused made the following statements which are germane to this judgment. He admitted he was suspicious that the package contained some illicit material but is emphatic he did not know what it was. When taxed about the discrepancies between his cautioned statement and his evidence on oath he said he did not mention Tan in the statement because at the time he did not know his name. As to the money, he now said that Tan had paid him $100 to carry the package. The DPP put to the accused that he had written the note to Tan to assist in the fabrication of a plausible defence. The accused denied this and said the note was written to remind Tan of what had really happened on that day.

The only other area of contention is that the accused claims that he was suffering from withdrawal symptoms at the time of his arrest. He was in no physical condition to run and when the cautioned statement was taken he was very disoriented. The police witnesses admitted the accused had to be lifted and carried to the place he was searched. The withdrawal symptoms, if there were any, was not seen by any of them. To the police, including Raja Khalid, he appeared normal.

Putting aside its credibility for the moment the defence which was advanced was that the accused did not know what the package he received contained and that in any event he could have had no idea of the weight of the pure heroin in the substance within the plastic packet.

Defence counsel submitted that even if the court held that the accused had not rebutted the presumption of knowledge that the packet contained some illicit material, the absence of precise knowledge as to the character of the substance he was carrying or its precise weight made this a case which was more suited for a conviction of aggravated possession under s 39A(2)(a) of the Act.

The first case he cited was *Warner v Metropolitan Police Commissioner*.[1] The accused there was stopped by a police officer whilst driving his mini-van. In the back were two boxes. The accused claimed, when asked, that the boxes

contained scent. In fact one contained scent. The other contained twenty thousand tablets containing amphetamine sulphate, a prohibited drug under the Drugs (Prevention of Misuse) Act 1964.

The brunt of this decision of the House of Lords was directed to the issue as to whether for the purposes of s 1 of the English Act a defendant was to be deemed to be in possession of a prohibited substance when to his knowledge he was in physical possession of the substance but was unaware of its true nature.

To say simply that the case decided whether the particular offence was an absolute offence or one in which mens rea was required is to gloss over the difficulties in cases of this kind. In the present context, one way in which these difficulties may be formulated is as follows:

(1) Where a person is in possession of a package but does not know what it contains, can he be said to be in possession of its contents?
(2) If the contents of the package is a substance which has an admixture of a prohibited drug, say heroin, can he be said to be in possession of the heroin, if he did not in fact know this, but only knew that the contents were something illicit?
(3) Even if a person may have known that what he was carrying was a substance which contained a prohibited drug, can he be said to be in possession of more than a stipulated amount, say 15g of heroin, if in fact he did not know the actual quantity of the prohibited drug which the composite substance may have had?

Very heavy reliance was placed by defence counsel on *PP* v *Abdul Hamid bin Basir.*[2] The sentence imposed by the High Court of ten years' imprisonment and six strokes of the rotan was enhanced on appeal to life imprisonment and ten strokes. But the appeal and cross-appeal against the conviction was dismissed on 17 January 1989 by the Supreme Court (SC Cr Appeal No 42 of 1987).

Defence Counsel therefore submits that I am bound by the High Court decision. With respect I am unable to agree. The Supreme Court did not give a reasoned judgment, and all I have before me is an order. Consequently the applicability of that High Court decision to the present case is an open question.

The facts in *Abdul Hamid bin Basir*[2] were as follows. The police raided the accused's house in Johore Bahru. The accused was in occupation. He opened the door for them. From under a bed in the accused's bedroom the police recovered 1,257 rolls of cannabis in a sling bag. The accused's defence was a total denial. His defence was that a friend named Yunus had visited the house the night before the arrest and slept in his house. The suggestion was that Yunus had left the bag there.

In the judgment, the High Court found that the prosecution had not proved custody or control of the bag. (See pp 3 and 4 of the judgment.) So the court declined to apply the presumption under s 37(d) of the Act that the accused had possession and knowledge of the contents of the bag. The court also declined to apply the presumption under s 37(g).

Counsel submits that the court went on to find (at p 6) that the accused had knowledge of the concealment of the bag under the bed but because the accused had no knowledge of the amount of the drug in the bag he could not be found guilty of trafficking but of possession only, and that in doing so it followed Lim Beng Choon J in his observations in *Ahmad bin Puteh*'s case[3] at p 492.

The facts in *PP* v *Ahmad bin Puteh & Ors*[3] were as follows. Four persons were charged jointly for trafficking in 3,524 rolls of cannabis. All were acquitted. The appeal by the DPP only proceeded against the owner of the premises who was the first respondent. The drugs were in a zipped bag with no lock (p 489). The bag was not recovered from a room used mainly, if not exclusively, by the first respondent (p 491). No presumption therefore arose under s 37(d) of the Act. The relevant portion of the judgment reads:

> But it is unreasonable to say that just because the first respondent had sight of the bag ... it must follow that he had custody of or control over it.

As to s 37(g), Lim Beng Choon J said at p 492:

> In the instant case, the drug was found not secreted in the house of the first respondent but in a bag which was left somewhere at the rear section of the house which could be seen by anyone entering into that section of the house. Moreover anyone could gain access or use the rear section of the house.
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> Accepting for the sake of argument that my construction of the scope of s 37(g) is wrong and that in the instant case the prosecution could rely on the presumption under s 37(g), the most that could be said is that the first respondent had knowledge of the concealment. But knowledge of concealment per se on the facts of this case is not sufficient to require the accused to answer to a charge of trafficking unless the prosecution had adduced sufficient evidence to show that the first respondent had also in his custody and control the amount of the dangerous drug in question which was in excess of the amount stipulated in s 37(da). The case of *PP* v *Lai Ah Bee* [1974] 2 MLJ 74 at 75 lends support to this proposition.

My understanding of this passage is that by itself s 37(g) does not create any presumption of knowledge of the nature or the quantity of the drug in question. It only creates a presumption of knowledge of the act of concealment. Knowledge of concealment by itself is not equivalent to possession. Custody or control of a dangerous drug has to be shown to bring s 37(d) into operation. It is then presumed that the accused was not only in possession but also deemed to have known the nature of the drug.

If the quantity was in excess of the prescribed limit in s 37(da), then the presumption is not only that the person was knowingly in possession but that such possession was akin to trafficking in the drug.

With respect to defence counsel and all concerned, I am unable to find anything in Lim Beng Choon J's judgment just quoted to lead to a suggestion that to sustain a charge of trafficking it is incumbent upon the prosecution to prove that the accused knew the precise weight or amount of a drug found in his possession. The whole purpose of the presumption is to relieve the prosecution of this burden by shifting the onus of proof, once the fact of possession actual, or presumed, has been established.

That s 39B of the Act does not create an absolute offence but mens rea must be established is indeed the subject of Lim Beng Choon J's succint analysis in his later judgment of *PP* v *Badrulsham bin Baharom*[4] at pp 588-590, especially p 589.

As to the knowledge requisite to sustain a conviction, Lord Guest said in *Warner*'s case[1] at p 382 at G:

> The burden of these cases is that there must be knowledge before there can be possession. There is no possession by a man until he knows what he has got. This, however, leaves the question of what is meant by 'what'.

If *Warner*'s case[1] is to have persuasive value in the Malaysian context, I would prefer to take cognizance of that part of Lord Guest's judgment commencing at pp 383D to 384I, subject only to the caveat that the offence of possession of drugs is not absolute, in Malaysia. What is necessary is for the prosecution to show that the accused had in his care and/or custody the article which turned out on analysis to be a dangerous drug. Once that is done mens rea in the sense of being in possession of the drug with knowledge of its nature will be presumed. Guilty knowledge has to be negatived albeit on the balance of probabilities by the accused.

Put thus, it will be seen that the difficulties which I have formulated earlier may be metaphysical rather than forensic because in the last reduction, the issue as to whether a person knew or did not know something will depend upon credibility.

In *Warner*'s case,[1] the second paragraph of the headnote reads:

> (ii) (per Lord Reid, Lord Pearce and Lord Wilberforce) the strong inference that possession of a package by an accused was possession of its contents could be rebutted by raising real doubt either:
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> (a) whether the accused (if a servant or bailee) had both no right to open the package and no reason to suspect that the contents of the package was illicit, or
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> (b) that (if the accused were the owner of the package) he had no knowledge of, or was genuinely mistaken as to, the actual contents or their illicit nature and received them innocently, and also that he had no reasonable opportunity since receiving the package to acquaint himself with its contents.

In the Malaysian context, the words 'the strong inference that possession of a package by an accused was possession of its contents' may in my view be substituted with 'the statutory presumption that possession by an accused of anything containing a dangerous drug was possession accompanied with knowledge of the nature of such drugs' so as to make the passage equally applicable to Malaysian conditions. However the end result is the same. Whether a real doubt has been raised depends upon whether in the totality of the case the rebutting evidence is credible.

Once the evidence establishes that an accused person knew that the material in his possession contained a dangerous drug, it seems to me idle to contend that he must be held guiltless because he did not know the precise weight of the drug therein.

Possession relates to what a man has got. Trafficking is concerned with what he intends to do with it. In general terms what we are at pains to discover is whether a person is a 'taker' or a 'pusher'. It is a notorious fact that pure heroin is diluted in a variety of ways. In the present case, the bulk was only 35.5% pure. It is not inconceivable for less than 15g of pure heroin to be bulked up in material which is many times its net weight. One can traffic in less than 15g of heroin and if the evidence points that way it will be a s 39B case. The applicability of s 37(da) in my view therefore does not depend upon the accused's knowledge of the precise nett amount of the drug in the bulk contents in his possession. If the bulk content turns out on inspection or analysis to contain more than the prescribed minimum, he will be *presumed* to be trafficking, ie that he knew he had the stuff in his possession, that he knew the nature of the stuff in his possession, and that he was in possession with intent to traffick and was trafficking. Lack of knowledge of the precise purity of the bulk in such circumstances is neither here nor there since the presumption under s 37(da) will only come into play if *possession* is first established. It can be rebutted only by showing that the accused had the drug for some purpose outside the ambit of the statutory definition of trafficking. (See s 2 of the Act.)

To this observation I feel obliged to add another. *Warner*'s case[1] was concerned with whether the Chairman of the Quarter Sessions had correctly directed the jury on the law. In Malaysia, drug cases are tried without a jury. The requirement of knowledge both as to the fact of possession of the drug and the nature of drug is a question of law. But whether in a particular case the evidence leads to an inference that an accused person must be found to have the requisite knowledge is a question of fact. The

reasons given by a judge for arriving at conclusions of fact is not 'law' and does not constitute judicial precedent.

To return to the evidence in this case, whichever version of the accused takes, the blunt fact remains that for the sake of a monetary payment he took the packet in question, concealed it on his person, and moved off to deliver it to its designated consignee. 'Carrying, sending, and delivering,' is included in 'trafficking' under s 2 of the Act.

As to knowledge, heroin was uppermost in the accused's mind at the time. He was a self-confessed drug addict. He got the packet from a person he knew to be a drug supplier and he was going to give it to a person who was to sell him drugs. He knew the packet contained something 'illicit'.

Before it was put in, the court interpreter explained the cautioned statement to the accused in Cantonese and the accused confirmed it was what he told the recording officer. It is true that he said then that he did not know what was in the packet. In court too he disclaimed knowledge of the contents. His denial was consistent. But was it credible?

The accused contradicted himself on who gave him the package (three Malays in the cautioned statement; Tan Boon Hock in his evidence). And on how much he was paid ($40 in his evidence-in-chief with a $1 to be used as a password and $100 in his cross-examination). These are serious discrepancies.

Then there is the question of the note to Tan Boon Hock. Tan Boon Hock had been summoned and was in the court precincts but he was not called by the accused. The accused has no duty to call any witnesses and in this respect I do not consider a drug case to be any different to a normal criminal case even where the presumptions apply. The fact that the note had to be written at all does not add to the accused's credibility. Where it leaves the court is that the accused took this packet for $100 to convey it to Ah Keong.

Has he displaced the presumption that he knew that it contained 'heroin'? The fact that he knew both Tan and Ah Keong to be drug suppliers, was himself a drug addict, concealed the packet in his trousers and ran away from the police, to my mind points only to one conclusion. The accused knew he was carrying heroin. At the risk of repetition but to make myself absolutely clear, I do not think that the accused's not knowing that 83.62g out of the 235.60g of the contents of the packet was pure heroin is a defence, since I hold he knew the nature of the drug he was carrying.

The only factor which may be urged in the accused's favour in this case is the fact of he being a drug addict and suffering from withdrawal symptoms at the time he was in Tan's power and had to do what he was told. But that factor can only be a mitigating circumstance when the fate of the accused is ultimately considered because in my view he was fully conscious of what he was doing, and he knew he was doing wrong.

Consequently I convict him of the offence of which he is charged and would invite counsel to make any observations considered appropriate before I pass on to sentence.

(After hearing defence counsel on observations appropriate for consideration by the Pardons Board, the court made orders for retention of the exhibits and stay of execution pending appeal. The accused was then sentenced to death.)

Accused convicted.

Solicitors: *Yusuf, Lee, Pathma & Marbeck.*

Reported by *Mathavan Devadas*

Siland Sdn Bhd & Anor v M & J Frozen Food Sdn Bhd & Anor

HIGH COURT (JOHORE BAHRU) — CIVIL SUIT NO 22-980 OF 1987
RICHARD TALALLA JC
25 FEBRUARY 1990

Land Law — Sale by public auction — Whether rights of chargor cease before conclusion of sale — Failure of purchaser to make payment of balance within stipulated time — Whether purchaser entitled to extension of time to make payment under order of court for sale — National Land Code 1965, ss 256, 257(1), (2) & 258(1)(a)

The first plaintiff ('Siland') was at all material times the owner of a piece of land. This land was charged to the second defendant ('Eu Finance') as security for a loan. Siland defaulted, whereupon Eu Finance applied for an order for sale of the land by public auction. The sale was subject to certain special conditions of sale. The first defendant ('Frozen Food') was duly pronounced the purchaser and a deposit of 25% of the purchase price was paid and a memorandum of contract was executed between the auctioneer and Frozen Food. Under cl 7 of the special conditions, Frozen Food was obliged to pay the balance of the purchase price into court within 30 days of the date of sale, ie 25 January 1987, and time was the essence of the contract. Frozen Food failed to do so. In July 1987, they obtained an order of court extending the time to pay the balance of the purchase price. However, Siland was not made a party to the proceedings. Siland then successfully applied to intervene in the proceedings and the order extending time was set aside. Notwithstanding the setting aside, Frozen Food paid the balance of the purchase price into court. On 29 September 1988, the senior assistant registrar issued a certificate of sale and the land was transferred to and registered in the name of Frozen Food.